STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 20, 2014
v	No. 312550 Wayne Circuit Court
PETER TAYLOR, Defendant-Appellant.	LC No. 12-004570-FH

Before: MURPHY, C.J., and DONOFRIO and FORT HOOD, JJ.

PER CURIAM.

Defendant appeals by right his jury trial conviction of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(*iv*). He was sentenced, as a fourth habitual offender, MCL 769.12, to 1 to 20 years' imprisonment. We affirm.

This case arises out of a routine drug patrol in Detroit on April 20, 2012. At 12:45 p.m., Officer Frederick Person was on patrol in a clearly marked scout car with his police badge displayed around his neck. There was a vacant home located at 14417 Fordham. Some of the windows on the home were boarded up, the electricity was illegally connected, there was no running water, and garbage was throughout the home. Officer Person had previously responded to that location on two to three occasions for complaints of narcotics dealing. From the back, the officer observed defendant wearing a blue baseball cap, a red hoodie, and blue jeans walking up the driveway of the vacant home. Because of the condition of the home and the prior complaints, Officer Person believed that defendant was going to the vacant home to buy or sell narcotics. The officer pulled his vehicle into the alleyway, exited, and found himself within twenty feet of defendant. The men made eye contact. Defendant tossed a clear plastic baggy, turned, and ran. Officer Person called for assistance with a description of defendant and his attire and retrieved the baggy, containing 18 little pill bottles filled with suspected rocks of crack cocaine. Ultimately, the weight of the cocaine was determined to be 4.2 grams. In his experience as a veteran police officer, the drugs were packaged for sale, not personal use. Officer Person checked the vacant home, but found no occupants.

Officer Randall Craig received the police bulletin that an individual was fleeing a suspected drug house wearing a blue baseball cap, red hooded sweatshirt, and blue jean pants. Within a minute or two of the bulletin, he observed defendant walking quickly down Gratiot Avenue and breathing heavily. Defendant matched the description provided by Officer Person.

Officer Craig detained defendant, and Officer Person identified defendant as the individual who dropped crack cocaine and fled the drug house. On the contrary, defendant testified that he was walking from his home to the home of a friend at a normal pace. He denied walking on Fordham Street. He denied being the individual that police were searching for and testified that there were numerous individuals on the street wearing red hoodies. Despite this testimony, the jury convicted defendant as charged.

Defendant first argues there was insufficient evidence that he intended to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(*iv*). We disagree.

In criminal cases, due process requires that the evidence must demonstrate the defendant's guilt beyond a reasonable doubt. *People v Harverson*, 291 Mich App 171, 175; 804 NW2d 757 (2010). This Court examines the evidence de novo, in the light most favorable to the prosecution, to determine whether a rational trier of fact could have found that the evidence proved each element of the crime beyond a reasonable doubt. *Id.*

There was sufficient evidence for a rational trier of fact to find that the elements of MCL 333.7401(2)(a)(*iv*) were proven beyond a reasonable doubt.

> [T]o support a conviction for possession with intent to deliver less than fifty grams of cocaine, it is necessary for the prosecutor to prove [beyond a reasonable doubt] four elements: (1) that the recovered substance is cocaine, (2) that the cocaine is in a mixture weighing less than fifty grams, (3) that defendant was not authorized to possess the substance, and (4) that defendant knowingly possessed the cocaine with the intent to deliver. [*People v Wolfe*, 440 Mich 508, 516-517; 489 NW2d 748 (1992).]

Intent to deliver need not be proven by actual delivery. *People v Gonzalez*, 256 Mich App 212, 226; 663 NW2d 499 (2003). "[W]hether under the circumstances of th[e] case, defendant knowingly possessed the cocaine with the intent to deliver . . . [presents] an issue for the trier of fact." *People v Whittaker*, 187 Mich App 122, 128; 466 NW2d 364 (1991). "[B]ecause it can be difficult to prove a defendant's state of mind on issues such as knowledge and intent, minimal circumstantial evidence will suffice to establish the defendant's state of mind, which can be inferred from all the evidence presented." *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008). "Possession with intent to deliver can be established by circumstantial evidence and reasonable inferences arising from that evidence, just as it can be established by direct evidence." *Wolfe*, 440 Mich at 526. "A factfinder can infer a defendant's intent from his words or from the act, means, or the manner employed to commit the offense." *People v Hawkins*, 245 Mich App 439, 458; 628 NW2d 105 (2001). When the resolution of the issue involves the credibility of two diametrically opposed versions of events, the test of credibility lies where statute, case law, common law, and the constitution have reposed it, with the trier of fact. *People v Lemmon*, 456 Mich 625, 646-647; 576 NW2d 129 (1998).

In the present case, defendant does not dispute the first three elements of MCL 333.7401(2)(a)(*iv*), but rather only contests the intent to deliver requirement. We conclude that there was sufficient evidence to support this element. *Harverson*, 291 Mich App at 175. Police officers were patrolling in the area of a vacant home with prior complaints of narcotics

trafficking. Although vacant, the home had an illegal electrical connection. Defendant was observed walking up the driveway toward the vacant home. When contact was attempted by Officer Person, defendant came within twenty feet of the officer, made eye contact, tossed a clear baggy, and fled the location. The officer recovered a clear plastic baggy containing 18 pill bottles of suspected cocaine. The parties stipulated that the lab results disclosed 4.2 grams of cocaine. The officer indicated, based on his experience, that the drug was packaged for sale, not personal use. Indeed, drug paraphernalia necessary to consume the drug was not recovered from defendant or with the plastic baggy. There were no other occupants in the vacant home.

Defendant contends that the evidence was insufficient to prove intent to deliver because the police officer did not testify as an expert and no cocaine was found in defendant's possession.[1] We disagree. A police officer not qualified as an expert on drug enforcement may provide opinion testimony, MRE 701, regarding a defendant's involvement in narcotics trafficking in light of the officer's perception and because of the assistance it may provide to the jury. *People v Daniel*, 207 Mich App 47, 57-58; 523 NW2d 830 (1994). Furthermore, Officer Person testified that defendant possessed the 18 pill bottles containing cocaine, but discarded it upon observing the officer. At trial, defendant testified that police were mistaken regarding his identity, and he never walked near the vacant home. The credibility of the conflicting testimony presented an issue for the jury, and the jury resolved this issue in favor of the prosecutor. *Lemmon*, 456 Mich at 646-647. Accordingly, this challenge is without merit.

Defendant next argues that offense variable (OV) 19 was erroneously scored because he did not "interfere or attempt to interfere with the administration of justice." MCL 777.49. We disagree.

If a minimum sentence is within the appropriate guidelines, this Court must affirm the sentence and may not remand for resentencing absent an error in scoring the sentencing guidelines or reliance on inaccurate information in determining the sentence. MCL 769.34(10); *People v Gibbs*, 299 Mich App 473, 484; 830 NW2d 821 (2013). The Michigan Supreme Court has interpreted MCL 769.34(10) to mean that, "[w]hen the defendant's sentence is based on an error in scoring or based on inaccurate information, a remand for resentencing is required." MCL 769.34(10); *People v Jackson*, 487 Mich 783, 792; 790 NW2d 340 (2010) (emphasis deleted). "Under the sentencing guidelines, the circuit court's factual determinations are reviewed for clear error and must be supported by a preponderance of the evidence. Whether the facts, as found, are adequate to satisfy the scoring conditions prescribed by statute, i.e., the application of the facts to the law, is a question of statutory interpretation, which an appellate court reviews de novo." *People v Hardy*, 494 Mich 430, 438; 835 NW2d 340 (2013) (footnotes omitted).

[1] Defendant's objection on appeal to the testing of only one of 18 bottles is without merit in light of the stipulation to admit the lab report that disclosed that the 18 rocks weighed 4.2 grams. A party may not approve of a course of action taken in the trial court and object on appeal. See *People v Kowalski*, 489 Mich 488, 504-505; 803 NW2d 200 (2011). To hold otherwise would allow counsel to harbor error as an appellate parachute. *Id*. at 505.

Offense Variable 19, MCL 777.49(1), addresses the threat to the security of a penal institution or an interference with the administration of justice or rendering of emergency services, *People v Smith*, 488 Mich 193, 198-199; 793 NW2d 666 (2010), and applies to crimes involving controlled substances, MCL 777.22(3). Interference or attempted interference with justice includes giving a false name to a police officer during the investigation of a crime, *People v Barbee*, 470 Mich 283, 287-288; 681 NW2d 348 (2004), and fleeing from police after an unambiguous order to stop, *People v Ratcliff*, 299 Mich App 625, 633; 831 NW2d 474 (2013), vacated in part on other grounds ___ Mich ___ (2013).

MCL 777.49 provides, in pertinent part:

> Offense variable 19 is threat to the security of a penal institution or court or interference with the administration of justice or the rendering of emergency services. Score offense variable 19 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:
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> * * *
>
> (c) The offender otherwise interfered with or attempted to interfere with the administration of justice[: 10 points]
>
> (d) The offender did not threaten the security of a penal institution or court or interfere with or attempt to interfere with the administration of justice or the rendering of emergency services by force or threat of force[: 0 points]

See also *Barbee*, 470 Mich at 286 (interpreting MCL 777.49). "Because the language of the statute is plain and unambiguous, [the appellate court] enforce[s] the statute as written and follow[s] its plain meaning, giving effect to the words used by the Legislature." *Id*.

The prosecution argued that 10 points was the correct score for OV 19 because defendant fled and additional police officers were called to catch him. On appeal, defendant argues that merely leaving the scene of a crime and later surrendering peacefully to police when caught is not behavior that merits 10 points under OV 19. Defendant contends that, because he did not lead the police on a car or foot chase, did not exert physical force to avoid being handcuffed or arrested, and did not lie to police by giving a false name when they arrested him, 10 points under OV 19 was not warranted.

Based on the plain language of MCL 777.49, defendant attempted to interfere with the administration of justice when he ran from police officers at the crime scene, tried to avoid being arrested, and, had he succeeded, police would not have been able to detain him. Additionally, when detained by Officer Craig, defendant attempted to convince him that they had apprehended the wrong individual. "The investigation of crime is critical to the administration of justice." *Barbee*, 470 Mich at 288. Because officers were trying to apprehend the individual who

committed a crime and defendant attempted to thwart that effort, OV 19 was properly scored because there was evidence in the record the defendant "attempted to interfere with the administration of justice." MCL 777.49.

Affirmed.

/s/ William B. Murphy
/s/ Pat M. Donofrio
/s/ Karen M. Fort Hood